

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re: Lockhart Chemical Company, f/k/a  
Additives International,

Debtor,

Natalie Lutz Cardiello, Chapter 7 Trustee for  
Lockhart Chemical Company,

Movant.

Bankruptcy No. 22-22005  
Chapter 7

HON. CARLOTA M. BÖHM

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**MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND  
ENERGY'S RESPONSE TO THE TRUSTEE'S APPLICATION FOR  
EMPLOYMENT OF PROFESSIONAL *NUNC PRO TUNC***

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) submits this response to the *Application for Employment of Professional Nunc Pro Tunc* (Application) filed by the Chapter 7 Trustee, Natalie Lutz Cardiello (Trustee), and states as follows:

1. EGLE neither supports nor objects to the Trustee's Application to employ NTH Consultants, Ltd. (NTH) as an environmental consultant. EGLE believes this response is necessary, however, to provide context for the Trustee's Application and to clarify the description of environmental issues and orders in the proposal for technical assistance (Proposal) submitted to the Court as Exhibit A to the Application. (See ECF No. 100-1.)

2. The Lockhart Chemical Company's (Debtor) business involves operating a facility located at 4302 James P. Cole Boulevard, Flint, Genesee County, Michigan (Facility), where it manufactures chemical products and stores

hazardous process materials, resulting in the generation of hazardous wastes and liquid industrial by-products. These materials and wastes pose a risk to public health and the environment and must be properly managed according to state and federal environmental laws.

3. Pursuant to State of Michigan Executive Orders Nos. 2011-1 and 2019-06, EGLE is the primary state agency charged with the administration and enforcement of environmental laws, including Michigan's Natural Resources and Environmental Protection Act, 1194 PA 451, Mich. Comp. Laws §§ 324.101–324.90106 (NREPA).

4. The Debtor had a long history of non-compliance with environmental protection laws, including failing to properly manage chemicals, hazardous wastes, contaminated process water and stormwater, and liquid industrial by-products.<sup>1</sup> This mismanagement led to numerous violation notices from EGLE, in which EGLE repeatedly identified the Debtor's inadequate response to spills; improper storage of hazardous chemicals and wastes; use of a structurally unsound above-ground trench and underground tunnel system (System) to contain oily substances and contaminated water; and unpermitted discharges of contaminants to the

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<sup>1</sup> These activities are regulated under multiple parts of the NREPA and the administrative rules promulgated thereunder, including Part 31, Water Resources Protection, Mich. Comp. Laws §§ 324.3101–324.3134; Part 111, Hazardous Waste Management, Mich. Comp. Laws §§ 324.11101–324.11153; Part 121, Liquid Industrial By-Products, Mich. Comp. Laws §§ 324.12101–324.12118; and Part 201, Environmental Remediation, Mich. Comp. Laws §§ 324.20101–324.20142.

groundwater and the City of Flint's storm sewer system and, ultimately, the Flint River.

5. On June 15, 2022, the Facility illicitly discharged approximately 15,000 gallons of oily substances into the Flint River. This illicit discharge prompted an emergency spill response by EGLE and the United States Environmental Protection Agency (EPA) to contain the spill, determine its source, and take other measures to protect public health and the environment.

6. During the investigation and response to the June 2022 release, EGLE documented numerous additional violations of the NREPA at the Facility, which led to multiple additional violation notices from EGLE.

7. NTH provided environmental consulting services to the Debtor prior to the bankruptcy, including responding to violation notices issued by EGLE. NTH has submitted a proof of claim in the amount of \$134,379.32 for these services. (See Claims Register, Claim No. 33.)

8. On September 12, 2022, EGLE staff observed an oily substance, sheens, and significant solvent-like odors in the System, as well as similar black oily substances in Outfall 001 to the Flint River. EGLE also found that a boom designed to prevent substances from reaching the Flint River had been displaced, such that water from Outfall 001 was entering the Flint River without contacting containment measures.

9. On September 14, 2022, EGLE collected samples from the Facility's System and Outfall 001 and submitted them for a chemical fingerprinting and library analysis.

10. The Debtor failed to adequately address EGLE's violation notices, and, on September 19, 2022, the Director of EGLE issued a Director's Final Order (DFO) under Part 31 of the NREPA. The DFO details extensive televising, water integrity testing, and sampling analyses demonstrating that the Facility's System was the source of the June 2022 release; that the Facility's System is structurally unsound; and that the Facility's System is likely to continue discharging oily substances into the Flint River. (*See Ex. 1, 9/19/2022 DFO, ¶¶ 7–31, 40–41.*) Based on these findings, the DFO ordered the Debtor to repair, replace, or seal off the compromised infrastructure and to take certain interim steps to protect the public health, safety, and welfare of the environment. (*See id. ¶¶ 37–44.*)

11. Rather than addressing the environmental issues at the Facility and repairing the compromised infrastructure, the Debtor filed for Chapter 7 bankruptcy on October 10, 2022. (ECF No. 1.)

12. The Trustee filed an *Expedited Motion for Authority to Operate Debtor's Business Nunc Pro Tunc* on October 19, 2022. (*See ECF No. 17.*) The Trustee must comply with environmental protection laws when operating property during the pendency of a bankruptcy case. *See 28 U.S.C. § 959(b).* Accordingly, the Trustee noted that it may be necessary to "retain and pay contractors and possibly a

consultant to work with the Trustee and various governmental agencies.” (See ECF No. 17, ¶ 9.)

13. This Court granted the Trustee’s motion for authority to operate the Debtor’s business on October 25, 2022. (ECF No. 29.) Upon information and belief, the Trustee has been consulting with NTH about environmental issues at the Facility since that time.

14. On October 26, 2022, EGLE’s laboratory returned a chemical fingerprinting and library analysis finding a match between the September 14, 2022 samples taken from the Facility’s System and Outfall 001, indicating that the oily substance in the Flint River generated from the Facility’s System. This information was provided to the Trustee and NTH, but did not lead to any new directives or requirements from EGLE.

15. On December 2, 2022, the EPA issued an Administrative Order, pursuant to its authority under Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c), requiring the Trustee to submit a Work Plan and a Health and Safety Plan outlining the steps to be taken to reduce the risk of a potential release of oil and hazardous substances during product removal. (ECF No. 81-1.)

16. EGLE strongly supports the proper removal, disposal, and sale of chemical products, materials, and wastes from the Facility in compliance with the DFO, the EPA Administrative Order, and applicable environmental protection laws.

17. EGLE also agrees that it is necessary and appropriate for the Trustee to retain an environmental consultant to assist with ensuring that the products,

materials, and wastes are safely removed from the Facility in compliance with all applicable orders and environmental protection laws.

18. However, EGLE is concerned that some of the statements in NTH's Proposal do not accurately describe the DFO and the environmental conditions at the Facility. For example, the Proposal states that the DFO "includes 48 conditions LLC must satisfy to continue operating." (*See* ECF No. 100-1, p. 2.) That is inaccurate. Although there are 48 paragraphs in the DFO, only eight of them contain affirmative conditions. (*See* Ex. 1, ¶¶ 37–44.) The remaining paragraphs are background, findings, recitals, and the like. (*See id.* ¶¶ 1–36, 45–48.)

19. EGLE also does not agree with NTH's suggestion that the "second release" in September 2022 was the sole basis for the DFO. (ECF No. 100-1, p. 2.) Instead, as the DFO itself reflects, EGLE's September 2022 observation of oily substances was only one piece in a large chain of evidence considered by the Director in issuing the DFO.

20. Additionally, EGLE disagrees with NTH's statement that the September 2022 release has "not been verified or fully substantiated." (*See id.*) EGLE's on-site observations and the chemical fingerprinting and library analysis conducted by EGLE's laboratory strongly support the conclusion that oily substances from Facility were present in Outfall 001 on September 14, 2022. EGLE has not been presented with any evidence to the contrary.

21. Finally, NTH's Proposal includes various pieces of outdated information concerning, for example, the operating status of the boiler system and

the Facility's ability to discharge water to the City of Flint's sanitary sewer system. (ECF No. 100-1, pp. 1–2.) Contrary to statements made in the Proposal, the Facility is currently operating its boiler system and has resumed discharging water to the City's sanitary sewer system.

22. EGLE, through counsel, has been in frequent communication with the Trustee regarding these and other issues.

23. As stated above, EGLE neither supports nor objects to the Trustee's Application. EGLE will continue to work with the Trustee, the EPA, and whatever environmental consultant the Trustee retains to ensure that the Facility is operated in a manner that is protective of the public health, safety, welfare, and the environment.

Respectfully submitted,

/s/ Keith D. Underkoffler

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Dated: February 27, 2023

LF: Lockhart Chemical Co. (EGLE-RRD, MMD, WRD) BK/AG #2022-0357710-B/Response to Application to Employ NTH  
2023-02-27